

Tourism and Law

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The attention of legal studies on tourism is still prevalingly focused on sectional legislation, which represent indeed a very important field to study in depth, since it is filled with implications related in particular to the different kind of tourist contracts.

Nevertheless, one thing is to analyze the statutory tourist legislation as a fragmentary set of rules, another thing is to study tourist legislation as a complete system of rules, that is a system composed by the whole set of rules, principles and juridical instruments - private and public - elaborated in this specific area.

Due to its nature, tourism has a very tight relationship with territory as well as with its resident population, with its culture and its traditions, which are all elements that must be promoted and improved by the central government and by local administrations.

This aspect could though mislead the interpreter, which could wrongly look at tourism legislation only as a local phenomenon since there are only few rules arising from the international system that could be applied to this specific field. Anyway this remark deserves to be deepened in specific studies, that should start with an accurate evaluation about the opportunity to regulate the field of tourism by a common core of rules.

European Union has not regulated tourism with an organized set of rules so far. Even if the Treaty had not originally given a specific legislative competence to the UE in this particular area, it is possible to identify a lot of aspects which are influenced by European law, such as, for instance, aspects related to freedom of movement of persons and services, to professional training, to environmental protection and - last but not least – to tourist protection as a specific kind of consumer. Relating to this aspect, it is sufficient to focus our attention to the so-called ruined holiday damage, which has been developed by the Courts and which raises the protection of tourist's physical and psychic conditions to the highest juridical dignity.

A new direction for the EU participation in this matter could anyway arise from the Treaty of Lisbon – which probably will entry into force by the end of 2009 – since it expressly mentions tourism among the sectors in which Community Institutions have the power to intervene.

However, the growing attention to the field of tourism at an international level - due to the relevant position that this specific area holds in every national budget - must not run down the importance of local regulations, which are directed to protect the territory, the local culture and to increase the value of the personal and unreplaceable relationship between tourism services's operators and users.

Tourism is thus characterized by this variety of profiles, by the complexity of its own nature, by the presence of different aspects which could indeed earn much

more value if considered as a well organized system. Looking for a definition of tourism it's not surely a duty of law, but it is necessary that legal studies concentrate on tourism within the consciousness of its relevant versatility.

Infact, from a legal point of view, tourism belongs to that kind of subjects characterized by transversality, since, at the same time, it is relevant for a lot of branches which, in an incisive way, have all to deal with activities and goods related to vacation and to its different implications. This peculiarity of tourism allows to identify a lot of legal instruments applicable in this area, which is not weakened by its complexity but, on the contrary, it is often a good source of public interventions and private agreements related to the various aspects that it shows. In this perspective, besides the above mentioned applications, we could now focus our attention on interventions of public bodies concerning: territory, environment and arts protection; thermal baths; pilgrimage; conventions and business's trips; means of transport; accommodation facilities; protection of food and beverage and so on. Tourism represent a moment of freedom, of enjoyment, of growth and cultural comparison, which is always in progress and which, for this reason, requires an adequate spirit of adaptability and innovation, such as, for example, the skill to make optimum use of seaside lands and facilities beside tourist season.

At the same time, in addition to its contractual dimension, tourism requests several interventions by public bodies in order to guarantee the necessary coordination between the various actions, especially in the light of the territorial spreading of the offer, which from its initial and local position has to reach an international level. The growing attention to the quality of services - beside the more traditional support and promotion of enterprises, users (such as, for instance, tourist loan) and employment in the depressed areas – requires an impartial intervention too in order to guarantee a well balanced relationship between operators and users.

The relationships between the parties to a contract is already more or less harmonized by virtue of several widespread uniform contractual practices, while, referring to public law, it's still possible to discover new borders since new models and criterions of governance are developing in this area.

In conclusion, we could maintain that the analysis of the relationships between law and tourism is open to social and economic reality so that it requires a profitable comparison activity among all scholars at an international level; in this perspective, the review AlmaTourism represent a very good place in which the debate could take place and a very useful instrument in order to spread researches on tourism.